

## Questions about the criminal records proposal from the 3/16/11 public forum

People who attended the public forum on March 16 submitted dozens of questions to the panelists. Unfortunately, there wasn't time to answer everyone's questions at the event itself.

Here are responses to all the questions that were submitted but not addressed at the event. The questions have been grouped according to topic area. The Seattle Human Rights Commission and the community groups who have been in support of this proposal will continue to work with elected officials to move this issue forward. Visit the [Seattle Human Rights Commission's web site](#) for more information.

**1. Why the stick and no carrot? The Landlord Liaison Project through the YWCA offers guarantees to landlords that incentivize an owner to rent to lesser qualified tenants. Why can't the City pursue a similar approach? Why aren't alternatives being explored to ensure professionals are helping re-entry? Do you think landlords have the skills needed to do this? How can the need be met without going the "protected class" route?**

This proposal applies to prospective tenants whose convictions do not relate to tenancy or threaten the safety of others. It also does not bar landlords from continuing to use other existing screening criteria such as ability to pay rent and prior rental history. Incentives are appropriate in cases where there are potential public safety and property damage issues. This proposal seeks to deal with this issue by continuing to provide landlords with a great deal of discretion in their choice of renters.

That said, this is just one piece of a much larger criminal justice discussion about the best ways to reduce recidivism. This law does not seek to address all the issues people with conviction or arrest records face but does look to create greater equity in those situations where a record does not relate to the ability for a person to be a good tenant or threaten the safety of others. This proposal is not a blanket protection. Rather it regulates how a record may be used in certain contexts.

**2. Are there any other government agencies presently advocating for similar protected class status in their respective jurisdictions?**

King County Office for Civil Rights testified at the forum in support of the discussion of appropriate options to address the clear problem.

**3. The main obstacle for parents with children in the child welfare system, and fathers in particular in bringing their children home is housing discrimination for prior arrests/convictions. With the current budget situation locally and statewide do you feel that housing discrimination puts an unfair burden on taxpayers who are then responsible for these children? Ie. foster homes, juvenile detention?**

When Sojourner Place Transitional Housing approached the Seattle Office for Civil Rights and the Seattle Human Rights Commission with the idea of creating greater protections, much of it stemmed from the experiences of their residents as parents unable to find housing for themselves and their children. Family reunification is a critical concern for individuals and organizations who are working on this issue.

**It makes sense to me that society has an interest in decreasing rates of recidivism. Given that people who are convicted of crimes are statistically more likely to commit another crime than those who have not been convicted, why is it unreasonable for a landlord to judge a prospective tenant on their criminal history (whatever the crime)? Why should landlords be compelled to bear the burden of this**

**increased risk? People who have criminal records have a documented pattern of bad behavior. It takes a lot to get an arrest record and even harder to get a criminal conviction. Why should I be forced to rent to a bad actor, when the Office of Civil Rights can't guarantee good behavior? What are your expectations of the leasing consultants/landlords. Are you trying to make us social workers?**

Studies show the propensity to re-commit a crime is not automatic. Rather, after 4 to 7 years where no re-offense has occurred, a former offender is no more likely than a non-offender to commit a crime<sup>1</sup>. The proposal is written in such a way as to provide landlords and employers with a great deal of discretion to deny an applicant if there is a direct relationship between the conviction and the job or occupancy, or if there is a threat to the safety of persons or property.

**Is a landlord's property going to be taken if they rent to a person with a drug arrest and the person starts a drug operation on the property? If a property becomes contaminated because of a drug operation will a landlord be reimbursed for cleanup of property?**

Under the proposal, a landlord would not be required to rent to a person with a record if there is a threat of harm or if the conviction relates to occupancy. The proposal does not protect existing criminal behavior. The proposal would not prohibit a landlord from conducting unit inspections to ensure that tenants are complying with nuisance or drug laws.

**Do you feel that if Seattle passes an anti-discrimination law it will encourage or discourage the state to pass a similar law?**

Hard to say. Sometimes civil rights laws are passed at the local level before moving up to the state level. Other times civil rights protections are created federally and then filter down to local jurisdictions. The federal government already has taken several steps regarding criminal records. The U.S. Equal Employment Opportunity Commission (EEOC), for example, has issued employment guidance that recognizes racial disparities in the criminal justice system. Title VII (a federal law) regulates employers' decisions based on a criminal record because criminal background checks have a disparate impact on people of color. According to the EEOC, employer decisions based on arrests alone routinely violate Title VII and employers' decisions based on convictions must be "job-related", taking into account the age and severity of the offense and evidence of rehabilitation.

**For the Seattle Office for Civil Rights to impose an unfair business model on property owners, what is the re-entry housing data that persuaded you to ignore 100% of all aspects of the offender re-entry process and concerns outlined in Washington State law? I refer specifically to Senate Bill 6400 and Senate Bill 6338 (which passed the senate 48 to 0). Have the statistics been considered of offenders who re-offend?**

The community groups that developed this proposal looked at a number of data sources, many of which are cited in the background fact sheet. It's not clear which state laws you are referencing in your question, since the two bills you have cited are not state laws but bills still under consideration (at this writing). Developers of this proposal did consult state law RCW 9.96A that was passed in Washington State in the 1970s, which had the intention of decreasing recidivism. This law created employment protections for people with certain conviction records after a period of time has passed. The law applies

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<sup>1</sup> Kurlychek, et al. "Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?" (2006) and "'Redemption' in an Era of Widespread Criminal Background Checks," *NIJ Journal*, Issue 263 (June 2009), at page 10 - preliminary study with group of first-time 1980 arrestees in New York- the findings depend on the nature of the prior offense and the age of the individual.

to public sector employment. In addition to data sources, supporters have met with a variety of stakeholders including housing providers, employers, social service providers who work with individuals in re-entry, other civil rights agencies that have existing protections and those impacted by their records. The proposal has tried to take a range of into account while still addressing the problem.

**Where in Washington are people with arrest/criminal records granted protected class status? Why a protected class?**

In Washington State it is currently against the law to discriminate on the basis of a conviction record in public sector employment if the conviction does not relate to the job and ten years has passed since the date of the conviction (RCW9.96A). There are exemptions to this law, and there is no enforcement agency set up to receive these complaints. This is not a protected class status but rather a state law regulating the way employers use records. In a similar way, the Seattle proposal would not create a “protected class” similar to race, gender or sexual orientation, but rather regulate the use of records in employment and housing decisions.

**If you employ or rent to a person with a violent criminal history, how do you protect the employer or housing provider from liability if a crime occurs?**

This proposal clearly states that a landlord is not required to rent to a person who poses a threat to the safety of others. The best way to ensure against liability is to practice responsible screening. Madison, WI has had a similar law in place since the 1970s, and has reported no issues concerning liability.

**Since this proposal does NOT protect someone who is “dangerous,” where are people with “dangerous” records supposed to live? What chance do they have for meaningful employment, a house to live in and a productive life? When we talk about community safety, shouldn’t we want these people to have direction in their life?**

This proposal is just one piece of a much larger community dialogue. It attempts to get at some of the problems faced by people with criminal records, but also acknowledges safety issues that have been expressed by landlords and employers.

**I’m an ex offender. I am working hard to make changes and am on a path to recovery. I am struggling to find housing and employment because of my convictions. I take responsibility for my actions and behaviors. I feel like I cannot get beyond my record and others won’t give me a chance. Please help people like me. What will it take to pass this ordinance?**

This proposal is one step in that direction. The Seattle Human Rights Commission and the community groups who have been in support of this proposal will continue to work with elected officials to move this issue forward. Visit the [Seattle Human Rights Commission’s web site](#) for more information.

**How can there be any justice in legally discriminating against people who have already served their time for crimes committed? Without the protection aren’t we just setting up people to re-offend?**

Reducing recidivism is a primary goal of this proposal. Adding protections to end discrimination based solely on arrest or conviction records is one strategy to help support people’s re-entry, and to decrease the likelihood of their re-offending. For more information and background on the importance of jobs and housing to reducing recidivism visit the [Seattle Human Rights Commission’s web site](#).

**What other cities have elevated felons to protected class status in terms of access to housing and how successful has the program been?**

Madison and Dane counties in Wisconsin have prohibited discrimination in housing and employment since 1977. New York State has protections for employment. Both agencies provide outreach and education on the issue for all stakeholders. Success can be measured both by how many people are finding that their record is no longer a barrier and in overall community education. As with other civil rights laws, this is a hard thing to capture from one indicator alone. We do know that in Madison over the last five years, 38 of the 138 cases of discrimination based on a conviction record were found to be probable cause following the investigation – about 28%. Thirty-two of the 138 cases (23%) settled in early mediation before the investigation was completed.

**Where does the Mayor stand on this issue?**

The Mayor does not yet have a position on this issue.

**I appreciate your concerns for preventing discrimination against people whose actions have earned them a felony conviction. Now please explain how we can make victims a protected class and how they can choose to live in a home without felons as neighbors.**

Reducing recidivism is a primary goal of this proposal. Adding protections to end discrimination based solely on arrest or conviction records is one strategy to help support people's re-entry, and to decrease the likelihood of their re-offending. As stated earlier, under this proposal landlords and employers would still be able to deny an applicant if the applicant's conviction related to the job/occupancy or posed a threat to the safety of others. There are also a number of exceptions to the proposal. Visit the [Seattle Human Rights Commission's web site](#) to read the full proposal.

**If the landlord is "still" allowed to do inspections for waste and nuisance and drug issues, are landlords expected to act as law "enforcement"?**

[Click here](#) for information on the Chronic Nuisance Property and Procedures. For questions regarding compliance, please contact the Seattle Police Department non-emergency number at 206-625-5011.

**What is the proposed time lapse from the release date and/or who decides it?**

The proposal would be in effect immediately a person is released from prison and/or obtains a record of arrest/conviction.

**Do we who operate multifamily units become liable when there is an ex-con who re-offends?**

This proposal clearly states that a landlord is not required to rent to a person who poses a threat to the safety of others. The best way to ensure against liability is to practice responsible screening. Madison, WI has had a similar law in place since the 1970s, and has reported that there have been no issues concerning liability.

**I agree an arrest record does not give the right to deny tenancy.**

Thank you for your comment. The Seattle Human Rights Commission and the community groups who have been in support of this proposal will continue to work with elected officials to move this issue forward. Visit the [Seattle Human Rights Commission's web site](#) for more information.

**Who gets to pay for the damages tenants cause when the deposit doesn't cover it and there is no possibility of restitution? My experience 5x so about \$5-\$7,500 per unit per tenant.**

A prior record does not predict success or failure in employment or housing. A 2009 Seattle-based study revealed that a criminal history alone does not predict if a person will be a successful housing resident<sup>2</sup>. Other studies show the propensity to re-commit a crime is not automatic. Rather, after 4 to 7 years where no re-offense has occurred, a former offender is no more likely than a non-offender to commit a crime<sup>3</sup>. This proposal allows a landlord to deny an applicant if there is a connection between the conviction and occupancy or a threat to the safety of persons or property.

**If an arrest record is different from a conviction why are they together in proposal?**

We modeled the proposal on existing laws in other jurisdictions that place both arrests and convictions in the same ordinance, yet define the protections specific to each. The Seattle Human Rights Commission will work with community groups and elected officials to determine the most appropriate form an ordinance would take.

**Some people say there are already supports from the government for people re-entering. Why is that not enough?**

We have received feedback from many community members about these programs. They offer vital services, but they cannot begin to meet the need.

**This proposal is addressing discrimination by landlord and employers – but what about the Seattle Housing Authority that exclude people with criminal history?**

The proposal applies to both private and public landlords. The proposal includes an exception for landlords and employers who are complying with existing laws regarding criminal background check requirements.

**How many offenders are released yearly? What is Seattle's plan to reintegrate them back into society?**

In 2009, over 17,000 people were released from prisons in Washington State; nearly 730,000 people were released from federal and state prisons across the country<sup>4</sup>. Reducing recidivism is a primary goal of this proposal. Adding protections to end discrimination based solely on arrest or conviction records is one strategy to help support people's re-entry, and to decrease the likelihood of their re-offending. This proposal is one step in that direction. The Seattle Human Rights Commission and the community groups

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<sup>2</sup> Daniel K. Malone, **Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders**, *Psychiatr Serv*, Feb 2009; 60: 224 – 230.

<sup>3</sup> Kurlychek, et al. "Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?" (2006) and "'Redemption' in an Era of Widespread Criminal Background Checks," *NIJ Journal*, Issue 263 (June 2009), at page 10 - preliminary study with group of first-time 1980 arrestees in New York- the findings depend on the nature of the prior offense and the age of the individual.

<sup>4</sup> Source: BJS, *Bulletin, Prisoners in 2009*, Heather C. West, Ph.D. and William J. Sabol, Ph.D. *BJS Statisticians*, and Sarah J. Greenman, *BJS Program Assistant*, December 2010, NCJ 231675

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**Who decides? Who has the right to decide if someone is currently breaking the law? Again the landlord is being put in a position to “baby sit” these ex-cons. What enforcement provisions will be included in the law to ensure that applicants with meritorious claims are protected and that the courts and administrative agencies aren’t overloaded with frivolous claims? What is considered a dangerous criminal record that would still allow for discrimination? How can non-experts establish if someone is rehabilitated?**

The proposal includes a set of regulations that provide landlords, employers and potential charging parties with a set of criteria to determine if a prior conviction relates to the job/occupancy. The Seattle Office for Civil Rights (SOCR) at 206-684-4500 is always available to answer questions regarding compliance with existing laws.

When a person files a discrimination charge with SOCR, the evidence must show that illegal discrimination took place. Our investigators gather evidence by conducting interviews, obtaining witness statements, and reviewing written information. In Madison, WI, where this law has been in place since the 1970’s, housing providers and landlords who have kept a record of reasons for denial and made clear the connection to tenancy have successfully demonstrated that they did not discriminate when they denied housing.